

Custodian banks want a rethink on high-risk list

By [Sugata Ghosh](#) & [Reena Zachariah](#), ET Bureau | Updated: Jul 16, 2018, 09.03 AM IST

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MUMBAI: In the wake of backlash from some countries, differences have cropped up among [custodian banks](#), with many unwilling to tag jurisdictions like [Mauritius](#), [Cayman](#) and UAE as 'high-risk'.

British bank [HSBC](#) wants a rethink on the list of 25 'high-risk' countries that was submitted to capital markets regulator Securities and Exchange Board of India ([Sebi](#)) by five global banks (which are among the custodians for foreign portfolio funds investing here.)

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Another MNC bank [Standard Chartered](#), which has a large presence in Asia, has reached out to Sebi expressing its reservations about the list. Local custodians such as [Kotak](#), [ICICI](#), [HDFC](#), Edelweiss, India Infoline, Axis and others — representatives of which

are meeting this week to discuss the issue — prefer excluding Mauritius from the list, three persons aware of the development told ET.

“Sebi is pointing out at findings on black money by JPC (Joint parliamentary committee) and SIT (special investigation team) earlier to push through a list of highrisk jurisdictions and curbs on non-resident Indians (NRIs). But countries like Mauritius have now brought in new anti-money laundering rules and informationsharing arrangement...

It’s evident the regulator is acting at the government’s instructions,” said a person who has attended several meetings with Sebi on the subject.

In the light of a recent Sebi circular, if a country is labelled as ‘high-risk’, large investors and beneficial owners of funds entering India through these jurisdictions will face close scrutiny.

NRIs and persons of Indian origin (PIOs) trying to participate in offshore funds investing in India will also run into a wall. “The government wants to stop roundtripping at any cost. It feels NRIs using Mauritius are the main players.

So, MNC custodian banks were nudged to prepare a list as both finance ministry and Sebi are hesitant to do it. Banks like Citi, Deutsche were involved. But now even some of the custodians that had initially endorsed the list are developing cold feet. They fear naming Mauritius, UAE and China as ‘high-risk’ could sour relationship and hurt business interest,” said a banker.

While Sebi has been silent on the matter, it could consider some changes in its recent directive to allow NRIs to manage funds even while retaining the restrictions on their direct investment in foreign portfolio investors (FPI), said a source. Also, it may differentiate between NRIs and PIOs in framing KYC rules and investment curbs.

“We don’t know whether Sebi will come out with a list of high-risk countries, whether they will consult IOSCO (International Organisation of Securities Commissions) or FATF (Financial Action Task Force) lists to arrive at a new list, or there will be a status quo,” said an official with a custodian.

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Some of security market experts in their representations to the finance ministry said that the rule on 'high risk' countries could be used for KYC purpose instead of restricting investments. According to the new Sebi rule, NRIs and PIOs cannot be 'beneficial owners' (BO) of FPIs; BO would mean 25% ownership in a company or 15% in a trust or partnership — depending on how an FPI is structured abroad.

The entry barrier is stiffer as the threshold (for establishing NRI control or dominance in the fund pool) would be as low as 10% if the FPI is based in a 'high risk jurisdiction'. Also, the regulation says that the BO rule would be triggered even if an FPI has NRI fund manager but no NRI investors.

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